



## CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 07/25/00

A G E N D A I T E M 12

WORK SESSION ITEM \_\_\_\_\_

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of **Planning Commission Revocation Action – Use Permit No. 90-44 – K9-K9 Kennels (Kennel Operator), James and Frances Dalton Trust (Owners) –**  
The Project Location is 4125 Breakwater Avenue, **Between Whitesell Street** and Johnson Road in an Industrial (I) District

### RECOMMENDATION:

It is recommended that the City Council uphold the Planning Commission's action revoking the use permit.

### DISCUSSION:

The use permit for the kennel was approved **in 1991 by the Board of Adjustments. At the time** the kennel operator, Mr. Van Voast, represented to the **Board** that the operation consisted of the breeding and **training** of dogs, with boarding as an incidental use. It became evident to City staff as early as 1993 that there **were** animal control problems associated with the kennel operation. Since that time, City staff has continued to address issues relating to the **treatment of animals and** the operation of the kennel. In 1997 there were complaints of **mobile homes being used for** residential purposes at the kennel, which was a violation of the use permit and a use that is not permitted in the Industrial **District**. When advised that he was in violation of the use permit, the operator applied **for an amendment to the Zoning Ordinance to allow their use in the Industrial District**. The **Planning Commission denied** the application, and the City Council affirmed the Planning Commission's action in October 1998. During those hearings, the Planning Commission **and the City Council** were apprised of the ongoing concerns by City **staff of the dog** handling practices at the kennel. In November 1999, the Planning Commission **held** a public hearing wherein revocation **of the use permit was considered. The Planning Commission** continued the matter for six months in order to provide further opportunity for the kennel to meet all conditions of approval of the use permit.

On May 18, 2000, the Planning Commission revoked Use **Permit 90-44**, which allowed for the operation of a kennel. **In revoking the use permit, Planning Commissioners commented that** there was a lack of due diligence on the part of the kennel operator in that there is a demonstrated lack of adequate supervision and a lack of meaningful and effective regulations by which the **kennel** might be operated. The Planning Commission initially **considered revoking the use permit on November 4, 1999, but delayed acting on the** revocation for six months. The Planning Commission indicated that after six months had lapsed, they would determine if the kennel operator had paid outstanding fines and was in compliance with the City's original terms

and conditions of the use permit before making a decision on the revocation issue. Although all **fin**es were paid, the kennel operator was found to not be in compliance with the City's original terms and conditions of the use permit. Specifically, condition No. 9 states,

***Comply with all City of Hayward Animal Control requirements such as, total number of dogs allowed on site at one time, cleanliness, size of kennels, treatment of animals in humane fashion, vaccine information and licenses for all animals kept on site, periodic inspections required.***

During the November 4, 1999, hearing, the City's Animal Control staff had enumerated instances where, in their opinion, the animals were not treated in a humane fashion, which resulted in injury to the animals and others who came in contact with the animals. On **December 31**, 1999, a dog boarded at the kennel (golden Labrador) was killed by another dog(s). Past incidents of inhumane treatment of dogs are described **in** the attached Planning Commission staff report dated October 14, 1999.


A letter appealing the Planning Commission's action was prepared by Hunter Pyle, the attorney for the kennel operator. The letter did not indicate why the kennel operator believes the Planning Commission's action was improper.

Subsequent to the Planning Commission hearing, a letter was received from Victoria **Aquino-Ronchette** urging Council to revoke the use permit based on her observations of animal abuse, unsupervised dogs of different breeds and temperment, and an unclean conditions. (See Exhibit C). Also during that period, two dogs escaped from the facility and were recovered by the City's Animal Services Division; and Carol Biaynton called to say that a rottweiler, trained by the appellant and given to her as a pet, was in fact vicious and had attacked her golden retriever so viciously and unceasingly that the police had to shoot the rotweiller.


A kennel is a needed facility in this area, which is demonstrated by the fact that there were **150+** dogs boarded during the Christmas holiday season. One of the attractions of the kennel is that dogs are not **confined** to cages during their stay. This practice of allowing dogs to co-mingle, perceived as a positive aspect of the kennel operation, has nonetheless resulted in unfortunate instances for some of the dogs that were boarded.

Records show that **the** kennel has been a detriment to the neighborhood and to the kennel's patrons since its inception **in 1990**. During the past six years, numerous incidents of animal abuse and code violations have been confirmed at the kennel. After receiving many verbal and **written** notices, including three **infraction** citations **and** being ordered to appear before the San Leandro-Hayward Municipal Court, the violations of the conditions of approval and various other Municipal Code requirements have continued. Based on the extended history of noncompliance for the site, there is no reason to believe that such violations will cease. The manner in which this use is conducted, managed and operated impairs the character and integrity of the zoning district and surrounding area; the applicant has not fully complied with all conditions of approval indicated in the use permit and modification of the use permit; it would not be in the public interest to **continue** the **kennel** operation; and it would be detrimental to the public health, safety and general welfare to continue the kennel use.


Prepared by:

  
Dyana Anderly, AICP  
Planning Manager

Recommended by:

  
Sylvia Ehrental  
Director of Community and Economic Development

Approved by:

  
Jesús Armas, City Manager

Attachments:

- |           |   |
|-----------|---|
| Exhibit A | Planning Commission Staff Report, dated October 14, 1999 with Attachments   |
| Exhibit B | Minutes of Planning Commission Meeting and Staff Report, dated May 18, 2000 |
| Exhibit C | Letter from Victoria Aquino-Ronchette, dated May 22, 2000                   |
| Exhibit D | Letter of Appeal, dated May 23, 2000  |
|           | Draft Resolution  |

7.20.00

**DUE TO THE LENGTH OF REFERENCED EXHIBITS, THEY ARE NOT AVAILABLE FOR WEBSITE VIEWING. THE AGENDA REPORT IN ITS ENTIRETY IS AVAILABLE FOR REVIEW IN THE CITY CLERK'S OFFICE AND AT THE MAIN LIBRARY.**

7/20/00  
mae

HAYWARD CITY COUNCIL

RESOLUTION NO.

Introduced by Council Member \_\_\_\_\_

RESOLUTION DENYING APPEAL AND REVOKING USE  
PERMIT NO. 90-44 FOR FAILURE TO COMPLY WITH  
CONDITIONS OF APPROVAL AND VIOLATIONS OF THE  
HAYWARD MUNICIPAL CODE

WHEREAS, Use Permit Application No. **90-44** **allowed** the operation of a kennel, known as **K9-K9** Kennel, located at **4125** Breakwater Avenue, subject to certain conditions of approval, including compliance with the City of Hayward Animal Control requirements and humane treatment of animals. The applicant for the use permit, Mr. Jack Van Voast, doing business as **K9-K9** Kennels, represented at the Board of Adjustments hearing on the use permit that the main function of the business would be the breeding and training of **Rottweilers**, with the boarding of dog as an incidental use; and

WHEREAS, the Planning Commission considered the matter and revoked Use Permit Application No. 90-44 at its meeting on May 18, 2000, for failure to comply with the conditions of approval and violations of the City of Hayward's Animal Control requirements and other Municipal Code requirements, and the record of its action is on file in the office of the City Clerk; and

WHEREAS, applicant **K9-K9** Kennels, by a letter through its attorney, has appealed the Planning Commission's revocation of Use Permit Application **No. 90-44**; and

WHEREAS, the City Council **finds** and determines that:

1. The kennel operator is not in compliance with the City's original terms and conditions of the use permit and is in violation of various Hayward Animal Control regulations and other Municipal Code requirements despite receiving both verbal and written notices, including three infraction citations and orders to appear before the San **Leandro**-Hayward Municipal Court, of said violations over a six-year period; and

2. The records show that the kennel has been a detriment to the neighborhood and to the kennel's patrons since its inception in 1990 in that the facility has experienced repeated infractions of the City's Animal Control requirements, such as the failure to maintain the appropriate size kennel for each dog and overcrowding; the failure to treat

animals in a humane fashion; the failure to maintain the facility in a clean condition; the failure to comply with and maintain vaccine information and licenses for all animals boarded at the facility and to adequately supervise the animals, resulting in the death of at least one dog following an attack by another dog being boarded at the kennel. The autopsy report on the deceased dog indicates that, given the nature of the wounds, the dog likely suffered from a prolonged attack and there was evidence that the dog had been dead for at least one hour prior to discovery by the kennel; and

3. The use or the manner in which it is conducted, managed and operated impairs the integrity of the zoning district and surrounding area in that the violations of the conditions of approval of the use permit and various provisions of the Hayward Municipal Code have continued unabated despite receipt by the property owner and kennel operator of numerous notices to abate the use violations. Inspection of the kennel grounds has revealed the presence of feces, flies and a moderate odor. Healthy animals boarded at the kennel have been returned diseased or injured to their owners. There have been numerous reports of animal abuse at the kennel. Kennel patrons have filed complaints about animal abuse, neglect and overcrowding. During a recent holiday season, more than 150 dogs were boarded at the kennel. The failure to adequately supervise the boarded animals and to maintain a clean, orderly facility jeopardizes the citizens residing and working nearby. The kennel operator and the property owner have consistently ignored the City's verbal and written notices, over a **six**-year period, to abate use violation situations, and there is no reason to believe, given the history of the kennel operations, that such violations will cease; and

4. That it would not be in the public interest and it would be detrimental to the public health, safety and general welfare to continue the kennel use in that the animals are poorly supervised. On more than occasion dogs have escaped the kennel and attacked citizens. One escaped dog was shot and killed by police after it charged and attacked several people. Another escaped dog was impounded and ordered destroyed **after** it charged and attacked several people. Guests and clients of the kennel have also been attacked at the kennel by the proprietor's dogs and boarded dogs. To permit ongoing kennel operations under these circumstances would constitute a public nuisance and a blight upon the neighborhood; and

5. Revocation of the use permit is categorically exempt from environmental review.

NOW, THEREFORE, BE IT RESOLVED by the City **Council** of the City of Hayward, that based upon the evidence provided, the minutes of the May 18, 2000, public hearing, the findings contained herein and in the staff reports, the action of the Planning Commission denying Use Permit. Application No. **90-44** is hereby sustained.

BE IT FURTHER RESOLVED that the operator or property owner must cease business and vacate the premises. The operator must stop taking in any new animals immediately and must immediately notify owners of currently-boarded animals that their

animals must be picked up, All animals must be removed and the business premises vacated within 45 days from the date of this Resolution.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_ , 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward